

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2019 MAY 20 P 2:08
CATHY S. COOPER, CLERK
KANAWHA COUNTY CIRCUIT COURT

I. CASE STYLE:

CASE #
JUDGE:

19-AA-54
Bailey

PETITIONER:
ADDRESS:

MINGO COUNTY BOARD OF EDUCATION
c/o Leslie K. Tyree, Esq.
3564 Teays Valley Rd.
Hurricane, WV 25526
(304) 553-1412

PHONE NO.:

RESPONDENT:
ADDRESS:

Beverly Cheryl Bailey
HC 71
Box 131
Gilbert, WV 25621

DAYS TO ANSWER:
TYPE OF SERVICE:

20
certified mail, return receipt, delivery restricted requested by Circuit Clerk

PYMT Type K
Rept # 591383 \$200 ☒ \$135 ☐
Iss. Sum. + cc ☐ No Sum. Iss ☐
Ret. to Atty. ☐ \$20cm X ☐
Mailed CM/RM ☐ \$5 clk X ☐
Mailed to sos w/ck# ☐
Sent to ☐ w/ck# ☐ \$15 mdf X ☐

PETITIONER: Mingo County Board of Education
RESPONDENTS: Beverly Cheryl Bailey
CASE NO. _____

II. TYPE OF CASE:

<u>TORTS</u>	<u>OTHER</u>	<u>CIVIL</u>
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other Tort: _____	<input checked="" type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND? ☐ Yes ☐ No ☒ Unknown

IV. DO YOU OR ANY OTHER CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

- ☒ No ☐ Yes if so please specify:
- ☐ Wheelchair accessible hearing room and other facilities.
 - ☐ Interpreter or other auxiliary aid for the hearing impaired.
 - ☐ Reader or other auxiliary aid for the visually impaired.
 - ☐ Spokesperson or other auxiliary aid for the speech impaired.
 - ☐ Other: _____

Attorney: Leslie K. Tyree
Address: 3564 Teays Valley Road
Hurricane, WV 25526
Telephone: 553-1412

☒ Petitioner
☐ Respondent

Signature:

Leslie K. Tyree
LKH

Date: 5/20/19

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION,

Petitioner,

v.

BEVERLY CHERYL BAILEY,

Respondent.

Case No.
Judge:

19-AA-51
Bailey

FILED

2019 MAY 20 P 2:08

CATHY R. BAILEY, CLERK
KANAWHA COUNTY CIRCUIT COURT

PETITION FILED PURUANT TO WEST VIRGINIA CODE § 29A-5-4
FOR JUDICIAL REVIEW OF DECISION OF THE WEST VIRGINIA
PUBLIC EMPLOYEES GRIEVANCE BOARD

Comes now your Petitioner, the Mingo County Board of Education, by and through counsel, Leslie Tyree, pursuant to West Virginia Code § 29-5-4, requesting judicial review of the *Decision* of the West Virginia Public Employees Grievance Board dated April 18, 2019. Your Petitioner would show as follows:

1. Venue is proper in this Court pursuant to West Virginia Code § 29-5-4;
2. On the 8th day of December, 2017, the Petitioner approved the decision to close Gilbert Elementary School at the end of the 2017-2018 school year, and merge the students from Gilbert Elementary School with students at Gilbert Middle School to create Gilbert PreK-8.
3. The Petitioner took the statutory steps to close Gilbert Elementary School.
4. The merger of the two schools fundamentally changed the Principal position at the new Gilbert PreK-8 School, that it required the Petitioner to post the position for bid.
5. On the 9th day of January, 2018, the Petitioner posted the position of Principal at Gilbert PreK-8.
6. The Respondent applied for the position, but was not recommended to fill the position.
7. On the 30th day of January, 2018, the Board posted the position of Assistant Principal at Gilbert PreK-8. The Respondent was selected as the new Assistant Principal effective July 2, 2018.

8. The Board subsequently filled the other remaining new positions at Gilbert PreK-8.

9. On January 11, 2018, the Respondent filed a level one grievance, alleging that the Petitioner improperly posted the principal position at Gilbert PreK-8, when that position was not vacant. The Respondent alleged that the principal position at Gilbert PreK-8 was her position.

10. The Respondent's grievance was denied at level one and after a mediation at level two, she appealed to a level three decision on August 1, 2018.

11. At the level III hearing, the Administrative Law Judge mistakenly found that the position of Principal was not affected by the merger of Gilbert Elementary School and Gilbert Middle School and misapplied the law.

12. The Petitioner asserts that this appeal is taken on both questions of law and questions of fact.

13. The Petitioner asserts that its substantial rights have been prejudiced, that the Administrative Law Judge's findings of fact were clearly wrong in view of the reliable, probative and substantial evidence on the whole record, and were arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

14. The Petitioner further asserts that the West Virginia Public Employees Grievance Board's *Decision* was in violation of statutory authority, pertinent case law, as well as the precedent previously set the West Virginia Public Employees Grievance Board.

Wherefore, the Petitioner prays that the Court enter a briefing schedule, a hearing in this matter be had, and that the Court reverse and vacate the West Virginia Public Employees Grievance Board's *Decision*, and for such other and further relief as this Honorable Court deems fair, just and proper.

Mingo County Board of Education,
By Counsel,

Leslie K. Tyree

Leslie K. Tyree (WVSB 6339) *by & with*
3564 Teays Valley Road *permission by*
Hurricane, WV 25526 *to 21*
(304) 553-1412 *[Signature]*

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION,

Petitioner,

v.

BEVERLY CHERYL BAILEY,

Respondent.

Case No. 19-AA-54


Judge: Bailey

Designation of Record

Comes Now the Petitioner, pursuant to Rule 4 of the West Virginia Rules of Procedure for Administrative Appeals, and designates the entirety of the record as material to the questions presented on appeal, including, but not limited to the transcript of the hearing before the West Virginia Public Employees Grievance Board on January 31, 2019.

Furthermore, the Petitioner requests a copy of the record be provided to the Petitioner pursuant to Rule 4(e) of the West Virginia Rules of Procedure for Administrative Appeals.

Mingo County Board of Education,
By Counsel


Leslie K. Tyree (WVSB 6339) *by [unclear]*
3564 Teays Valley Road
Hurricane, WV 25526
(304) 553-1412

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

MINGO COUNTY BOARD OF EDUCATION,

Petitioner,

v.

Case No. 19-AA-54

Judge: Bailey

BEVERLY CHERYL BAILEY,

Respondent.

MAY 23 PM 1:25
CATHY S. CATRON, CLERK
KANAWHA COUNTY CIRCUIT COURT

CERTIFICATE OF SERVICE

I, Leslie Tyree, counsel for the Respondent, do hereby certify that service of the Petitioner's
Designation of Record has been made upon the following person(s) by mailing a true and exact copy
thereof in a properly stamped and addressed envelope this the 23 day of May, 2019.

Ben Barkey, Esq.
1558 Quarrier St.
Charleston, WV 25311

WV Public Employees Grievance Board
1596 Kanawha Blvd. East
Charleston, WV 25311

Beverly Cheryl Bailey
HC 71
Box 131
Gilbert, WV 25621

Leslie L. Tyree
Leslie Tyree, Esq. (WVSB# 6339) *4 TSH*
3564 Teays Valley Road
Hurricane, West Virginia 25526
(304) 553-1412

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION,

Petitioner,

v.

BEVERLY CHERYL BAILEY,

Respondent.

FILED
JULY 23 PM 1:25
CATHY S. GIBSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Case No. 19-AA-54

Judge: Bailey

MOTION TO STAY

Comes now the Petitioner, the Mingo County Board of Education, by and through counsel, Leslie K. Tyree, pursuant to W.Va. Code § 29A-5-4(c) and Rule 3 of the West Virginia Rules of Administrative Appeals, and moves this Honorable Court to stay the *Decision* of the West Virginia Public Employees Grievance Board pending the outcome of this appeal. In support of this motion, the Petitioner states as follows:

1. The Petitioner made the decision to close Gilbert Elementary School at the end of the 2017-2018 school year. The Petitioner chose to take the classes and students from Gilbert Elementary School and add them to the existing Gilbert Middle School creating a school known as Gilbert PreK-8.
2. West Virginia Code § 18A-4-7a(o) states, in pertinent part, that:

Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant[.]

W. Va. Code § 18A-4-7a(o)


3. In short, the Petitioner is statutorily required to post all newly created positions.
4. Our Supreme Court has repeatedly held that "[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351 S.E.2d 58 (1986)." Syllabus Point 2, *Hancock County Bd. Of Educ. v. Hawken*, 209 W.Va. 259, 260, 546 S.E.2d 258, 259 (1999).
5. The Petitioner in exercising its above described substantial discretion, determined that the adding of seven (7) grades, pre-kindergarten through fifth grade, to the three (3) grades previously taught at Gilbert Middle School, substantially and materially changed the positions of Principal and Assistant Principal sufficiently to cause the positions to constitute new positions that must be posted.
6. Thus, the issue for this Court is whether the Petitioner's decision was reasonable, in the best interest of the schools, and not arbitrary and capricious.

7. The West Virginia Public Employees Grievance Board has previously explained that “[a] case by case analysis is required to determine when a new position is created.” *Virginia Childs v. Berkeley County Board of Educ.*, 1996 WL 882883 (1996). This decision is the discretion of the County Superintendent of Schools.
8. The West Virginia Public Employees Grievance Board has further held that “[w]hen duties performed by two administrative employees are combined into one position, the result is a newly created position as evidenced by factors such as job title, duties, responsibilities, qualifications and certification.” *Fletcher v. Berkeley County Bd. Of Educ.*, Docket No. 02-87-017-02 (May 15, 1987).” *Houston Arbuckle, et al. v. Greenbrier Count Bd. Of Educ.*, Docket No. 90-13-005.
9. In the present instance, the Petitioner determined that the job title as principal of a newly configured PreK-8 school is different than the title of a principal of an elementary school. Likewise the duties and responsibilities related to the position of a principal of a PreK-8 school, where an individual must serve as administrator for ten (10) grades of children ranging from four years of age to fourteen years of age as opposed to serving as an administrator to three grade levels, was a sufficient change to constitute a newly created position.
10. The Petitioner seeks a stay of the *Decision* of the West Virginia Public Employees Grievance Board pending the outcome of this appeal as it is likely that the Petitioner will prevail on the merits of the appeal, and if this matter is not stayed, the Petitioner as well as the students at Gilbert PreK-8, will suffer from a lack of continuity.
11. Furthermore, the Administrative Law Judge at the lower level ordered the Petitioner to insert the Respondent into the position of Principal at a school which no longer exists, Gilbert Middle School.

Thus, for each of the aforementioned reasons, the Petitioner respectfully requests this Honorable Court to order the *Decision* of the West Virginia Public Employees Grievance Board stayed pending the outcome of this appeal, as well as all other relief the Court deems appropriate.

Mingo County Board of Education,

By Counsel


Leslie K. Tyree (WVSB 6339) *by Tull*
3564 Teays Valley Road
Hurricane, WV 25526
(304) 553-1412

FILED
Cathy S. Gatson
Kanawha Co. Clerk
MAY 28 2019

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION,

Petitioner,

v.

Case No. 19-AA-54

Judge: Bailey

BEVERLY CHERYL BAILEY,

Respondent.


CERTIFICATE OF SERVICE

I, Leslie Tyree, counsel for the Respondent, do hereby certify that service of the Petitioner's *Motion to Stay* has been made upon the following person(s) by mailing a true and exact copy thereof in a properly stamped and addressed envelope this the 23 day of May, 2019.

Ben Barkey, Esq.
1558 Quarrier St.
Charleston, WV 25311

WV Public Employees Grievance Board
1596 Kanawha Blvd. East
Charleston, WV 25311

Beverly Cheryl Bailey
HC 71
Box 131
Gilbert, WV 25621


Leslie Tyree, Esq. (WVSB# 6339) *by TWH*
3564 Teays Valley Road
Hurricane, West Virginia 25526
(304) 553-1412

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION, 29 12:49

Petitioner,

Clerk of Court
KANAWHA COUNTY, CIRCUIT COURT

v.

Case No.
Judge:

19-AA-54
Bailey

BEVERLY CHERYL BAILEY,

Respondent.

ORDER FILING PETITION FOR REVIEW

On this day appeared your Petitioner, Mingo County Board of Education, by and through counsel, Leslie K. Tyree, and presented unto this Court a Petition for Review of *Decision* of the West Virginia Public Employees Grievance Board. After reviewing the same, this Court does find that it has jurisdiction over this matter pursuant to West Virginia Code §29A-5-4. It is therefore ORDERED that this Petition be filed.

It is the further Order of this Court that a copy of said Petition be served upon the West Virginia Public Employees Grievance Board and that the Public Employees Grievance Board shall file with the Clerk of this Court a complete copy of all exhibits in the file, and a copy of all administrative orders made by the Grievance Board within 60 days of entry of this Order.

It is the further Order of this Court that a briefing schedule and hearing on the merits of these claims will be set upon receipt of the transcript of the hearing.

Entered this the 29th day of May, 2019.

Judge

Jeff. L. Bailey

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION, 29 PM 12:49

Petitioner,

KANAWHA COUNTY CIRCUIT COURT

v.

Case No.

Judge:

19-AA-54
Bailey

BEVERLY CHERYL BAILEY,

Respondent.

ORDER FILING PETITION FOR REVIEW

On this day appeared your Petitioner, Mingo County Board of Education, by and through counsel, Leslie K. Tyree, and presented unto this Court a Petition for Review of *Decision* of the West Virginia Public Employees Grievance Board. After reviewing the same, this Court does find that it has jurisdiction over this matter pursuant to West Virginia Code §29A-5-4. It is therefore ORDERED that this Petition be filed.

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It is the further Order of this Court that a briefing schedule and hearing on the merits of these claims will be set upon receipt of the transcript of the hearing.

Entered this the 29th day of May, 2019.

Judge

Jeffrey L. Bailey

Prepare by:

Leslie K. Tyree

Leslie K. Tyree (WVSB 6339) *by i with*
3564 Teays Valley Road *Permission by*
Hurricane, WV 25526 *TS-21 WJ*
(304) 553-1412

Date: *5/31/99*
Certified copies sent to: *A. Bailey*
☒ counsel of record
☐ parties
☐ other
By: *L. Tyree*
(please indicate)
☐ certified/1st class mail
☐ fax
☐ hand delivery
☐ interdepartmental
Other directives accomplished:
TS-21
Deputy Circuit Clerk

FILED
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION,
Petitioner,

vs.

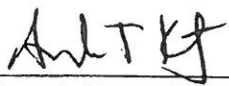
2019 JUN -6 PM 1:22
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
CIVIL ACTION NO.: 19-AA-54
(Judge Bailey)

BEVERLY BAILEY,
Respondent.

NOTICE OF APPEARANCE

Please take notice that the undersigned counsel will be representing the Respondent,
Beverly Bailey in the above captioned matter.

BEVERLY BAILEY
By Counsel



Andrew J. Katz (6615)
Te Katz Working Families Law Firm, LC
The Securty Building, Ste. 1106
100 Capitol Street
Charleston, WV. 25301

7

FILED
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MINGO COUNTY BOARD OF EDUCATION,
Petitioner,

vs.

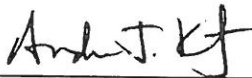
2019 JUN -6 PM 1:22
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
CIVIL ACTION NO.: 19-AA-54
(Judge Bailey)

BEVERLY BAILEY,
Respondent.

CERTIFICATE OF SERVICE

I, Andrew J. Katz, counsel for Respondent Beverly Bailey do hereby certify that I have on the 4th day of June, 2019 caused to be served a true copy of a **NOTICE OF APPEARANCE** via US Mail, postage pre-paid, to the individual listed below:

Leslie K. Tyree, Esquire
3564 Teays Valley Rd.
Hurricane, WV. 25526



Andrew J. Katz (6615)
Te Katz Working Families Law Firm, LC
The Securty Building, Ste. 1106
100 Capitol Street
Charleston, WV. 25301

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
MINGO COUNTY BOARD OF EDUCATION,

Petitioner,

v.

BEVERLY CHERYL BAILEY,

Respondent.

FILED
2019 SEP -5 AM 11:52
JENNIFER F. BAILEY, CLERK
KANAWHA COUNTY CIRCUIT COURT

Case No. 19-AA-54
Judge Jennifer F. Bailey

SCHEDULING ORDER

The Court has received a copy of the administrative record in this appeal. This order controls the schedule for the submission of briefs unless modified as provided below.

Petitioner's brief shall be filed on or before October 4, 2019. Respondent's brief shall be filed on or before November 4, 2019. Petitioner may file a reply brief on or before November 19, 2019. Both parties are to provide a proposed order to the Court on or before November 19, 2019. The Court will consider the appeal for a decision on the briefs.

This order may be modified by the Court *sua sponte* or by agreement of the parties. The parties shall promptly notify the Court in writing of any agreement to modify this order. The parties cannot agree to modify a deadline that has passed. The Court will not consider a brief filed after the filing date.

File the original of all briefs with the Clerk of the Circuit Court of Kanawha County, West Virginia. In addition, promptly provide a copy of all filings to opposing counsel and to the Court at the following address:

Honorable Jennifer F. Bailey
Attn: Zachary Gray, Law Clerk
111 Court Street, Room 408
Charleston, WV 25301

Please note that, pursuant to Rule 22.01 of the West Virginia Trial Court Rules, you must

FILED
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
MINGO COUNTY BOARD OF EDUCATION, 2019 SEP -5 AM 11:52

Petitioner,

CLERK
KANAWHA COUNTY CIRCUIT COURT

v.

Case No. 19-AA-54
Judge Jennifer F. Bailey

BEVERLY CHERYL BAILEY,

Respondents.

ORDER DENYING MOTION TO STAY

Currently pending before the Court is Petitioner Mingo County Board of Education's "Motion to Stay" filed May 28, 2019, which seeks have this Court stay the Decision of the West Virginia Public Employees Grievance Board dated April 18, 2019. The Decision of the West Virginia Public Employees Grievance Board granted the grievance of the Respondent and restored her to the position of Principal at Gilbert Middle School, now known as Gilbert Prek-8.

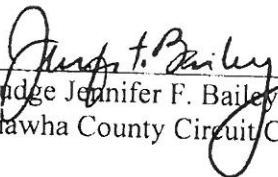
Petitioner puts forth a potential for lack of continuity for the petitioners and the students at Gilbert Prek-8 as a justification for the stay. However, it appears from the record that prior to the filing of the grievance below by Respondent, the Respondent served as Principal of Gilbert Middle School, which subsumed Gilbert Elementary School to become Gilbert Prek-8. Further, after events transpired that gave rise to this controversy, Petitioner hired Respondent as Vice Principal of Gilbert Prek-8. Therefore, it would seem that both before this controversy arose and after this controversy is resolved, Respondent was and would still be involved in the highest levels of Gilbert Prek-8 administration. This Court therefore does not find the potential lack of continuity a compelling justification for granting a stay.

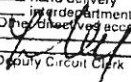
Further, Petitioner states that the stay should be granted because Petitioner is likely to prevail on appeal. However, this Court cannot say that it is obvious from the record and filings

that Petitioner is likely to prevail on review. While Petitioner may ultimately prevail, more briefing is needed to properly assess the facts and conclusions made by the lower tribunal under the applicable standards before this Court can make that determination.

It is hereby **ORDERED** that the Motion for Stay is **DENIED**. It is further **ORDERED** that the Clerk of this Court is directed to forward a certified copy of this Order via facsimile to the parties and counsel of record.

ENTERED this 5th day of September, 2019.


Judge Jennifer F. Bailey
Kanawha County Circuit Court

Date: 9-5-19
Certified copies sent to:
☒ counsel of record
☒ parties
☐ other Gr Bd
(please indicate)
By: 
☒ certified/1st class mail
☐ fax
☐ hand delivery
☐ interdepartmental
Other methods accomplished:
Deputy Circuit Clerk

MINGO COUNTY BOARD OF EDUCATIO vs. BEVERLY CHERYL BAILEY

LINE DATE ACTION

1 05/20/19 # CASE INFO SHEET; PETITION; F FEE; RCPT 571383; \$200.00
2 05/28/19 @ DESIGNATION OF REC W/COS;
3 05/28/19 @ MOT TO STAY W/COS
4 05/28/19 @ DOCKETING STMT W/ATTACH & COS
5 05/31/19 \$ @ MLD BB, LT (55/29)
6 05/29/19 LK O: FILING PET FOR REVIEW S/BAI
7 06/06/19 # MOT OF APPEARANCE W/COS
8 06/07/19 # RECORD FROM WV PUBLIC EMPLOYEES GRIEVANCE BOARD
9 09/05/19 = ORDERS (2) MLD TO L.TYREE, B.BARNEY, A.KATZ, GRV BD; 9/5/19;LT
10 09/05/19 LK O: SCHEDULING ORDER S/BAI
11 09/05/19 LK C: DENYING MOTION TO STAY S/BAI